IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C.R.No.6527 of 2005
Date of Decision : September 20, 2006.

Shahraj Ahmed ..... Petitioner

Vs.

Shamshad Ahmed ..... Respondent

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Ashok Sharma, Advocate
for the petitioner.

Mr.Rajesh Kumar, Advocate
for the respondent.

* * *

P.S.Patwalia, J. :

The present revision petition has been filed challenging the order dated 1.8.2005 and 5.10.2005 passed by the Rent Controller, Chandigarh. By the first order the defence of the petitioner, tenant in the present revision petition was struck off and by the second order, an application for recalling of order dated 1.8.2005 dismissed.

A petition for eviction of the petitioner on the ground of personal necessity as well as non payment of rent was filed by the landlord,

respondent in this revision petition. In the said petition, after the written statement had been filed by the petitioner, the following order was made on 7.3.2005 :-

> *"Present : Counsel for the parties.*
>
> *Written statement filed. Copy supplied. Rent of the premises in dispute has been assessed as under. Heard. Rent is due from 1.3.97 till the institution of the case i.e. 31.1.2005. The rent is admitted as Rs.300/- per month. Total rent comes to Rs.28500/-. Interest calculated @ 6% of this amount is Rs.5040/-. Cost Rs.500/- imposed. Total amount Rs.34040/-. Defendant/respondent grant time for the payment of rent. Rent be paid on 28.3.2005. Replication if any filed on that date.*
>
> *Sd/- Civil Judge, Jr.Divn.*
> *7.3.2005"*

On 28.3.2005 the Presiding Officer relinquished the charge and the case was fixed before the Duty Magistrate. On that date the following order was made :-

> *"Present : Counsel for the parties.*
>
> *File put up before me as per the orders of Ld. Distt. Judge, Chandigarh as the Ld. Presiding Officer has relinquished the charge. Now come up*

on 4.5.2005 for payment of rent and for filing of replication.

Civil Judge, Jr.Division
cum Duty Magistrate
Chandigarh 28.3.3005"

On 4.5.2005 again the Presiding Officer was under transfer and the case was put up before the Duty Magistrate who passed the following order :-

"Present : As above.

File put up before me as per the orders of Ld. District Judge, Chandigarh as the Ld. Presiding Officer has relinquished the charge. Now come up on 1.8.2005 for the purpose already fixed.

Civil Judge, Jr.Division
cum Duty Magistrate
Chandigarh 4.5.3005"

A perusal of the orders reproduced herein above would show that in terms of the order dated 7.3.2005, rent as determined was to be paid on 28.3.2005. On 28.3.2005 the matter was adjourned to 4.5.2005 for payment of rent and on that date it was kept for 1.8.2005.

The petitioner avers that on 1.8.2005 his counsel appeared before the Presiding Officer in the pre-lunch session and made a request that the case be kept for the post-lunch session as the petitioner had requested

his counsel that he had gone to Saharanpur to see his brother who was undergoing heart treatment and could reach the court only after lunch. Accordingly the petitioner's counsel made the said request before the Rent Controller which was accepted and the case was kept for the post-lunch session.

The petitioner contends that his counsel thereafter went to the High Court and could not reach the court up to 3:15 P.M. When the counsel reached the court he came to know that the Rent Controller had passed the following order :-

> *"Heard. From the pleadings of the parties following issues are framed :-*
>
> *1. Whether the respondent is liable to be evicted from the premises in dispute on the grounds mentioned in the Petition ? OPP.*
>
> *2. Whether the Petition is not maintainable ? OPD.*
>
> *3. Relief.*
>
> *No other issue is pressed or claimed. Now come up on 7.12.2005 for evidence of the plaintiff. PF DM list of witnesses etc. be filed within 7 days. Rent not tendered. Hence the defence of the defendant is hereby struck off.*
>
> *Sd/-*
> *Atul Marya/JMIC/CJ(JD) 1.8.05"*

A reading of the order would show that the defence of the

petitioner was struck off as rent had not been tendered. The petitioner contends that immediately on that very day itself, an application was filed stating the facts under which the petitioner's counsel had made a request for keeping the matter in the after lunch session. It was also mentioned in the application that thereafter the counsel had gone to the High Court for attending a case and by the time he reached the court of Rent Controller at about 3:15 P.M. he came to know that the defence of the petitioner had been struck off. It was further stated in the application that the absence of the petitioner or his counsel before the court was not intentional and that the petitioner was ready to tender the rent due before the court. On this application, the following order was noted :-

> *"Application filed at 3.55 P.M.*
> *Notice to opposite party be issued*
> *for 16.9.2005.*
>
> *Sd/-*
> *CJ (JD) 1.8.05."*

The application was thereafter taken up for hearing on 5.10.2005. On that day it was dismissed on the ground that till 3:15 P.M. no one had appeared on behalf of the tenant to tender the rent and accordingly the court was compelled to strike off the defence. It was also observed in the order dismissing the application that even before 1.8.2005 no rent had been tendered and therefore the conduct of the tenant disentitled him from seeking the relief of recalling the order.

Learned counsel for the petitioner has contended that in fact the matter was got passed over in the pre-lunch session as the petitioner could

not come present in the court before lunch. In the post-lunch session it was only on account of absence of the counsel for the petitioner that the defence was struck off. He further submitted that as per the order dated 7.3.2005 the rent was to be deposited on 28.3.2005 and thereafter on 4.5.2005 and lastly on 1.8.2005. Therefore the petitioner had no occasion to deposit the rent on any date prior to 1.8.2005.

Learned counsel for the respondents on the other hand states that the defence of the petitioner was rightly struck off. The respondent has filed a separate Civil Miscellaneous application wherein it has been stated that the plea raised by the petitioner that he had gone to Saharanpur to meet his ailing brother is not correct as the medical certificate attached by him is not a genuine one. A number of judgments have been relied upon by the respondent to contend that if the rent is not paid within the time granted to make the payment then the tenant is liable to face eviction. The time for payment cannot be extended.

I have heard learned counsel for the parties and have perused the paper book. I am of the opinion that by order dated 7.3.2005 petitioner was to make the payment of rent by 28.3.2005. Since on that date the Rent Controller was not available the date for payment of rent was kept as 4.5.2005 and on that date also since the Rent Controller was not available the date was fixed as 1.8.2005. On 1.8.2005 the Rent Controller agreed to keep the case after lunch. After lunch the petitioner was willing to tender the amount as has also been stated by him in his application for recalling of the order. The relevant portion of the application is as hereunder :-

> *"5. That the presence of the respondent before this Hon'ble Court is not intentional but*

beyond his control. The respondent is ready to tender the amount before this Hon'ble Court."

It is only on account of non appearance of the counsel that the rent could not be tendered and an order was passed striking off the defence of the petitioner-defendant. The petitioner immediately moved an application on that very day at about 3:55 P.M. stating these facts and expressed his willingness to tender the rent. In these circumstances I am of the opinion that the petitioner should not be made to suffer only on account of the absence of his counsel. Since it is only on account of non appearance of the counsel that the rent could not be tendered I am of the opinion that the order dated 1.8.2005 and 5.10.2005 dismissing the application filed by the petitioner to recall the first order are liable to be set aside. The petitioner would now tender the amount before the Rent Controller on the next date of hearing fixed by this order.

The objection raised by the learned counsel for the respondent that the medical certificate filed by the petitioner was not genuine carries no weight as on that basis the petitioner had only asked that the matter be kept after lunch on 1.8.2005. That request had been granted. Therefore in my opinion the argument would not have any bearing on the controversy in issue. I need not also refer to the judgments relied upon by the learned counsel for the respondent to the effect that the time granted for deposit of rent cannot be extended. In the instant case the petitioner was not claiming for extension in time rather he was willing to tender the rent on the date fixed but he could not do so because of absence of his counsel. Hence those judgments would also have no application to the facts of this case.

For the aforesaid reasons this revision petition is allowed and

the orders dated 1.8.2005 and 5.10.2005 are set aside. Parties would now appear before the Rent Controller, Chandigarh on 23.10.2006 on which date the rent would be tendered by the tenant as determined by order dated 7.3.2005.

September 20, 2006 (P.S.Patwalia)
monika Judge